

UNITED STATES DISTRICT COURT

for the

Middle District of Georgia

United States of America

v.

Gregorio Garcia

Date of Original Judgment: 07/30/2009

Date of Previous Amended Judgment: N/A

(Use Date of Last Amended Judgment if Any)

Case No: 5:06-CR-00074-002

USM No: 93112-020

John Fox

Defendant's Attorney

**ORDER REGARDING MOTION FOR SENTENCE REDUCTION
PURSUANT TO 18 U.S.C. § 3582(c)(2) (Amendment 821)**

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by Amendment 821 to the *United States Sentencing Guidelines*, and having considered such motion, and taking into account the Policy Statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:

☒ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (*as reflected in the last judgment issued*) of _____ months **is reduced to** _____.

(Complete Parts I and II of Page 2 when motion is granted)

The defendant was sentenced on July 30, 2009, to 262 months imprisonment after pleading guilty to Count One of a three-count Indictment charging Conspiracy to Possess with Intent to Distribute in Excess of 500 Grams of Cocaine, in violation of 21 U.S.C. § 846 i/c/w 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(ii).

On November 1, 2023, amended Sentencing Guidelines went into effect that reduced criminal history "status points" (being under a criminal justice sentence at the time the offense is committed) and provided a two-level reduction for "Certain Zero-Point Offenders." USSG §4A1.1(e) reduced the number of status points assessed to one point *if* the defendant receives seven or more points under subsections (a) – (d) and was under a criminal justice sentence at the time he committed the instant offense. USSG §4C1.1(a) (Certain Zero-Point Offenders) reduces a defendant's offense level determined under Chapters Two and Three by two (2) levels if the defendant meets all of the criteria set forth at USSG §4C1.1(a)(1) – (10) – including that no criminal history points under Chapter Four, Part A be received. When sentenced, no criminal history "status points" were assessed. As he received nine criminal history points under USSG §4A1.1, he is not considered a "Zero-Point Offender" and is not eligible for a reduction under USSG §4C1.1(a). Pursuant to USSG § 1B1.10(a)(2) (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)), a reduction in a defendant's term of imprisonment is not consistent with this policy statement and therefore is not authorized under 18 U.S.C. § 3582(c)(2) where the amendment does not have the effect of lowering the defendant's applicable guideline range. Because the defendant's advisory sentencing range remains unchanged, his Motion to Reduce Sentence (Doc. 137) is **DENIED**.

Except as otherwise provided, all provisions of the judgment dated 07/30/2009 shall remain in effect.

IT IS SO ORDERED.

Order Date: 4/12/2024

S/ Marc T. Treadwell

Judge's signature

Effective Date: _____
(if different from order date)

Marc T. Treadwell, Chief U.S. District Judge

Printed name and title